



POLICE DEPARTMENT

December 13, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2022-25279
Police Officer Chardy Alberto	:	
Tax Registry No. 953624	:	
30 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Theresa Freitas, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

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CHARGES AND SPECIFICATIONS

1. Police Officer Chardy Alberto, on or about April 4, 2020, at approximately 1849 hours, while assigned to the 30 Precinct and on duty, in the vicinity of [REDACTED], New York County, was discourteous, in that he said, in sum and substance, "You all deaf? Stupid? What is it? Person A you can't fucking stay here," and "Don't you be fucking walking behind me," to an individual without police necessity.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

2. Police Officer Chardy Alberto, on or about April 4, 2020, at approximately 1849 hours, while assigned to the 30 Precinct and on duty, in the vicinity of [REDACTED], New York County, was discourteous, in that he told Person A "Back the fuck up," without police necessity.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT –
PROHIBITED CONDUCT

P.G. 200-02

MISSION, VISION, AND
VALUES OF THE NYPD

3. Police Officer Chardy Alberto, on or about January 25, 2021, at approximately 1322 hours, while assigned to the 30 Precinct and on duty, in the vicinity of 100 Church Street, New York County, provided a misleading official statement to the CCRB regarding him shoving an individual on April 4, 2020.

P.G. 203-08

FALSE OR MISLEADING
STATEMENTS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 2, 2023. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The CCRB introduced into evidence Body-Worn Camera footage from Respondent and his partner, as well as a recording of Respondent's interview with the CCRB. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the

Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Guilty of Specifications 1 & 2 (discourtesy), Not Guilty of Specification 3 (misleading statement), and recommend a total penalty of five (5) vacation days.

ANALYSIS

This case involves an encounter that occurred on April 4, 2020 inside and in front of [REDACTED] in Manhattan. At that time, Respondent and his partner were responding to a call that individuals were trespassing and drinking inside the lobby of the location.

Video footage from the Body-Worn Cameras ("BWC") of Respondent and his partner captures most of the interaction. Respondent's BWC shows the officers arriving at the location and directing several individuals to move away from the front of the apartment building. Most of the individuals do disperse, though one of them remains, leaning on a car in front of the building. That individual, "Person A" tells Respondent that he has his speaker charging inside the lobby, and the video footage appears to confirm that claim. As Respondent and his partner are speaking with Person A several people from the group hover near them in the street. Respondent's partner tells them that they cannot stay in front of the building, and Respondent then states to them, in a loud voice, "You all deaf? Stupid? What is it? Person A you can't fucking stay here." Person A himself, tells the individuals to move away while he waits for his speaker to charge, and the remaining group disperses. (CCRB Ex. 1 at 1:00-3:00)

Seconds later, Respondent and his partner enter the building to look around. The video footage shows Person A walk quickly inside behind them. Respondent turns to face Person A and asks why he's behind him. Person A starts to explain that he is going to get his speaker. Respondent appears to push Person A away, while telling him, "Don't you be fucking walking behind me like that." Respondent also grabs Person A's jacket and tries to move him out of the building. As Person A

backs toward the exit, two other individuals, a male and a female, approach the entrance. The female voices some concern about what is happening between the officers and Person A. Respondent then deploys his O.C. pepper spray in their direction, and shouts, "Back the fuck up." Person A and the other two individuals move away from the front of the building, all three apparently having been hit by the spray. (CCRB Ex. 1 at 3:35-5:00; CCRB Ex. 2 at 0:01-1:00)¹

Respondent was interviewed by the CCRB on January 25, 2021. An audio recording of that interview, along with the accompanying transcript, were admitted into evidence. (CCRB Exs. 3 & 3A). In that interview, when Respondent was initially asked to describe his encounter with Person A inside the building, he repeatedly volunteered that he "grabbed" Person A by the coat after he rushed into the building behind Respondent. When Respondent was asked whether he shoved Person A, Respondent answered that he never shoved Person A into the wall, but explained that he did act to keep Person A at arm's length. Respondent noted that the foyer was a narrow area, it was the middle of the COVID pandemic, and he did not want Person A on top of him. (CCRB Ex. 3A at 25, 35, 38-39, 42)

Later in the interview, Respondent was given a chance to view the BWC footage, and was again asked if he "shoved" Person A. Respondent answered that he was "pushing" him back in order to provide separation between them, but again denied that he was shoving Person A against anything. When asked what would constitute a "shove," Respondent stated that he was not sure, but that what happened here was him pushing Pope away. (CCRB Ex. 3A at 82-87)

At trial, Respondent testified that he was familiar with the location based on repeated complaints of loitering, smoking marijuana, dice playing, loud music, and drinking. Upon

¹ Respondent's use of force against Person A and his use of his O.C. pepper spray, were resolved with a Schedule B Command Discipline in 2020, for which Respondent forfeited five (5) vacation days. That conduct is considered here only to provide context to the charge that Respondent made a misleading statement when questioned about the incident during his official interview with the CCRB on January 25, 2021.

arriving at the scene, he instructed the individuals there to disperse. Some complied, but others lingered, and he repeatedly told them to move. He acknowledged using profanity in speaking to them, even though the individuals were not acting in a threatening manner, nor were they cursing at the time. Respondent testified that from his experience that is the type of language that is used in the area, and that is "the only way they listen." (Tr. 27-29, 36-39)

Respondent then proceeded inside the building to make sure that no one was still inside. Respondent testified that Person A came in behind him and tried to push past. He told Person A not to walk behind him like that, and pushed him back in order to gain distance between them. Instead of walking away, Person A asked him what he was doing, and so Respondent grabbed him by the coat and tried to turn him around so he would leave. Respondent acknowledged that as other individuals approached the front door he deployed his O.C. pepper spray, and then stated, "Back the fuck up." (Tr. 30-33, 39-42)

With respect to his CCRB interview, Respondent testified he reviewed his BWC footage just prior to the interview, and it was played at some point while he was being questioned as well. Respondent told the investigator up front that he had stopped and grabbed Person A. He also explained during the interview that he was trying to gain distance. Respondent testified that he used the word "push" to describe what he did because he was pushing Person A away, as opposed to "shoving" him which suggests more of a wrestling type encounter. (Tr. 33-34, 42-44)

Specifications 1 and 2 charge Respondent with making discourteous remarks. As stated in the Disciplinary Guidelines, the Department prohibits misconduct involving discourtesy. Discourtesy may include foul language, and acting in a rude or unprofessional manner.

It is undisputed that during his interaction with the individuals outside the building, Respondent stated, "You all deaf? Stupid? What is it? Person A you can't fucking stay here."

Moments later, after he entered the vestibule of the building, Respondent said to Person A "Don't you be fucking walking behind me." He also stated to a woman at the entrance of the building, "Back the fuck up." Respondent acknowledged making these statements, which were captured on video.

On the one hand, Respondent was dealing with a recurring situation where a group of individuals were trespassing and loitering in and about an apartment building, despite repeatedly being told to disperse. Also, Person A did suddenly rush into the building behind him, and so Respondent's initial desire to create some space between them was understandable.

Nevertheless, the specific circumstances here did not justify the language used by Respondent toward the various individuals at the location, many of whom appeared to be teenagers. I reject his explanation that the use of foul language was justified because it is "the only way they listen." Upon Respondent's arrival, some of the individuals did disperse as ordered. Those few that lingered in the street were not cursing or acting in a threatening manner toward the officers. The comments Respondent directed toward them, such as questioning whether they were "deaf" and "stupid," were gratuitous and unwarranted. If Respondent felt that he was unable to gain compliance by directing the individuals, in a professional manner, to disperse, he could have taken enforcement action. Instead, he ran afoul of the Department's guidelines by speaking discourteously to the people present.

Similarly, it was unnecessary and inappropriate for Respondent to tell Person A and the woman at the entrance of the building to "Back the fuck up" immediately after deploying his O.C. pepper spray in their direction. Person A already had been moving toward the exit, and the woman was backing away as well at the time Respondent made the discourteous comment.

As such, the credible evidence has established that Respondent's use of foul language was unwarranted under the circumstances, and that he acted in a rude and unprofessional manner toward the individuals at the location. Accordingly, I find Respondent Guilty of Specifications 1 and 2.

Specification 3 charges Respondent with providing a misleading statement during his official CCRB interview on January 25, 2021. Specifically, it is alleged that he was misleading regarding whether he shoved Person A inside the building. The Patrol Guide defines a misleading statement as one that is intended to misdirect the fact finder, and materially alter the narrative.

As noted above, during the interview Respondent never denied that he had a physical encounter with Person A inside the building. This was not a situation where Respondent initially claimed there was no physical contact with Person A and then altered his narrative when shown the video footage. Rather, Respondent repeatedly acknowledged, from the start, that there was physical contact, and he volunteered up front that he grabbed Person A by the coat. When asked whether he shoved Person A Respondent stated that he did not "shove" him into the wall, but admitted that he did act to keep Person A at arm's length in order to create space between them. After being shown the BWC footage by the CCRB investigator, Respondent again was asked whether he "shoved" Person A Respondent denied that he shoved Person A against anything, but reiterated that he was "pushing" Person A back in order to provide separation. The video footage in evidence (CCRB Ex. 1) is consistent with that response.

Viewing the interview as a whole, the record has failed to prove that Respondent was intentionally providing misleading responses to the CCRB investigator. Respondent consistently acknowledged that he engaged in physical contact with Person A even before he was shown the video. Simply because he chose to describe his actions as a "push" as opposed to a "shove" did

not render Respondent's answers deliberately misleading. A "push" and a "shove" are substantially similar, and I am not persuaded that Respondent's conscious objective was to misdirect the fact finder and materially alter the narrative, particularly where he was well aware that the incident was captured by his BWC. The credible evidence has failed to establish that Respondent provided a misleading statement. Accordingly, I find him Not Guilty of Specification 3.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum. Respondent has no formal disciplinary history.

Respondent, who was appointed to the Department on January 9, 2013, has been found Guilty of two counts of discourtesy. Under the Disciplinary Guidelines, the presumptive penalty for discourtesy is five vacation days. The CCRB has recommended consecutive penalties of five vacation days for each of the two counts, for a total of 10 vacation days. The CCRB also recommended a penalty of Termination for the misleading statement allegation, but as discussed above, Respondent has been found Not Guilty of that charge. Given that finding, and in light of the Command Discipline that covered the wrongful use of force aspects of this incident, this penalty recommendation deals only with Respondent's discourtesy.

As noted above, the manner in which Respondent spoke to the individuals at the scene, many of whom appeared to be teenagers, was unwarranted. His use of foul language was

inappropriate to the situation with which he was dealing. Respondent acted in a rude and unprofessional manner, both toward Person A and the individuals outside the building, and to the woman who came to the doorway in response to what was occurring between Respondent and Person A in the vestibule.

Under the specific circumstances presented here, the presumptive penalty of five vacation days for each of the two counts is warranted. Since Respondent's discourtesy was essentially part of a continuous encounter where he was attempting to get individuals to disperse from an apartment building, the penalties should run concurrently with each other. On balance, a total forfeiture of five vacation days is appropriate to address Respondent's discourtesy in this case. Taking into account the totality of the facts and issues in this matter, I recommend that Respondent forfeit five (5) vacation days for each of the two counts, to run concurrently, for a total forfeiture of five (5) vacation days.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

FEB 20 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER CHARDY ALBERTO
TAX REGISTRY NO. 953624
DISCIPLINARY CASE NO. 2022-25279

Respondent was appointed to the Department on January 9, 2013. On his three most recent annual performance evaluations, he was rated "Exceeds Expectations" for 2020, 2021, and 2022. He has been awarded one medal for Excellent Police Duty.

Respondent has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials